5. Divorce (§ 326*)—Foreign Judgment—Conclusiveness—Evidence.—In such case no evidence was admissible which related to a time prior to the decree granted the wife.

[Ed. Note.—For other cases, see Divorce, Cent. Dig. §§ 827-830, 840; Dec. Dig. § 326.* 6 Va.-W. Va. Enc. Dig. 224.]

Appeal from Circuit Court, Alexandria County.

Action by Joseph A. Kelly against Mary Ann Kelly. From decrees awarding plaintiff a divorce a mensa et thoro and an injunction restraining the defendant from collecting certain alimony, the defendant appeals. Reversed, and decree dismissing the bill entered.

R. Gordon Finney, of Rosslyn, and *John H. Hopkins,* of Rochester, N. Y., for appellant.

Daniel T. Wright and *T. Morris Wampler,* both of Washington, D. C., for appellee.

MOOMAW et al. *v.* JORDAN et al.

Jan. 13, 1916.

[87 S. E. 569.]

1. Mortgages (§ 151*)—Purchase-Money Mortgage—Priority over Judgment.—Where a purchaser, contemporaneously with the execution and delivery of the deed, gives the vendor a deed of trust to secure unpaid purchase money, the two conveyances are regarded as parts of one transaction, and the purchaser's title is subject to purchase-money mortgage, so a judgment creditor, whose judgment is rendered before the deed of trust is recorded, acquires no priority.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. §§ 307, 309-311, 314-329, 332-336; Dec. Dig. § 151; Judgment, Cent. Dig. §§ 1367, 1371.* 10 Va.-W. Va. Enc. Dig. 42.]

2. Judgment (§ 506*)—Collateral Attack—Right to Question.—Where defendants were parties to a proceeding in which a judgment creditor of their purchaser sought to subject the lands on which they held a purchase-money deed of trust to the lien of his judgment and they failed to appeal or in any way question decree which granted the judgment creditor priority, they cannot thereafter assert the priority of their deed of trust and collaterally attack the decree.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. § 949; Dec. Dig. § 506.* 8 Va.-W. Va. Enc. Dig. 815.]

Appeal from Circuit Court, Montgomery County.

Bill by Dabney Jordan and another against O. N. Moomaw

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

and another. From a decree for complainants, defendants appeal. Affirmed.

Jno. C. Moomaw, C. B. & H. M. Moomaw, and *R. C. Jackson,* all of Roanoke, for appellants.

Kime, Fox & McNulty, of Roanoke, for appellees.

VIRGINIAN RY. CO. *v.* BELL.

Jan. 13, 1916.

[87 S. E. 570.]

1. Appeal and Error (§ 1003*)—Review—Negligence—Improbability of Accident.—In action by railway mail clerk for injury to his neck, claimed to have been caused by being struck by a sliding door in car, which had no hook and which shut on a sudden checking of the train, that the injury was different from any which might have been expected would not warrant the Supreme Court of App als in saying that the accident was impossible and improbable.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3938-3943; Dec. Dig. § 1003.* 1 Va.-W. Va. Enc. Dig. 576.]

2. Appeal and Error (§ 997*)—Questions of Fact—Demurrer to Evidence.—While a demurrer to the evidence may require the Supreme Court of Appeals to accept as true that which is capable of proof, though the preponderance is greatly against it, it cannot compel it to accept as true what in the nature of things could not have occurred as narrated.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4023, 4024; Dec. Dig. § 997.* 1 Va.-W. Va. Enc. Dig. 576.]

3. Appeal and Error (§ 987*)—Questions of Fact.—The Supreme Court of Appeals cannot consider the weight of the evidence or the credibility of the witnesses.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3893-3896; Dec. Dig. § 987.* 1 Va.-W. Va. Enc. Dig. 592.]

4. Appeal and Error (§ 1099*)—Former Appeal—Law of Case.—The holding on a former appeal by defendant carrier in a railway mail clerk's action for injury, when the door of the car shut by a sudden stop of the train, that the defendant's negligence and the plaintiff's contributory negligence were questions for the jury was the law of the case on a second appeal, where the evidence at the trial was not substantially different from that given on the first trial.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4370-4379; Dec. Dig. § 1099.* 1 Va.-W. Va. Enc. Dig. 592.]

5. Evidence (§ 553*)—Expert Testimony on Hypothetical Question—Assumption of Fact.—In a railway mail clerk's action for injury to his neck when the door of the car shut as the train was being

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.